

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX**

J. H. BENNETT MOVING & STORAGE, INC. AND  
PIPER MOVING SYSTEMS, INC., SINGLE  
AND/OR JOINT EMPLOYER<sup>1</sup>

Employer

and

Case 6-RC-11822

GENERAL TEAMSTERS LOCAL 397 A/W  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO<sup>2</sup>

Petitioner

PIPER MOVING SYSTEMS, INC.

Employer

Case 6-RC-11829

and

GENERAL TEAMSTERS LOCAL 397 A/W  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO

Petitioner

**DECISION, ORDER AND DIRECTION OF ELECTION**

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a hearing<sup>3</sup> was held before Kim R. Siegert, a hearing officer of the National Labor Relations Board.

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<sup>1</sup> The name of the Employer appears as amended at hearing.

<sup>2</sup> The name of the Petitioner appears as amended at hearing.

<sup>3</sup> The two petitions were consolidated for hearing by an Order Consolidating Cases dated May 15, 2000.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to the undersigned Regional Director.<sup>4</sup>

Upon the entire record<sup>5</sup> in these cases, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. J. H. Bennett Moving & Storage, Inc. (herein "Bennett") and Piper Moving Systems, Inc. (herein "Piper") are both engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of Bennett and Piper.

4. A question affecting commerce exists concerning the representation of certain employees of Bennett and Piper within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

In Case 6-RC-11822, the Petitioner seeks to represent a unit of all full-time and regular part-time drivers, movers and helpers employed by Bennett and Piper, single and/or joint employer (herein collectively "Bennett/Piper"), at Bennett/Piper's Erie, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.<sup>6</sup> Petitioner presently represents a unit of only Bennett employees described subsequently herein, and, through this petition, requests that a self-determination election be ordered among the Piper employees to determine if the Piper employees wish to be included in the existing unit of Bennett employees. Bennett and Piper, contrary to the Petitioner, contend

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<sup>4</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by June 26, 2000.

<sup>5</sup> Counsel for both Employers filed a timely brief in this matter which has been duly considered by the undersigned.

<sup>6</sup> The unit description is as amended at the hearing.

that Bennett and Piper are separate entities and the two companies are neither a single employer nor joint employers, and therefore a single unit of Bennett and Piper employees is inappropriate. In the alternative, in Case 6-RC-11829, the Petitioner seeks to represent all full-time and part-time drivers, movers and helpers employed by Piper at Piper's Erie, Pennsylvania, facility; excluding clerical employees, guards and supervisors as defined in the Act.<sup>7</sup> Should it be found that Bennett/Piper are not a single employer or joint employers, Piper is willing to agree to the appropriateness of the petitioned-for unit of Piper employees.

Bennett is a Pennsylvania corporation engaged in the business of providing moving and storage services in the Erie, Pennsylvania area. Bennett has a franchise agreement with United Van Lines (herein "United"), which was signed by J. Gordon Naughton on behalf of Bennett. Bennett's customers are primarily residential customers, although it also services some commercial customers. The business was purchased by Naughton in about 1989. Bennett has been located on Raspberry Street (herein "the facility") in Erie since about 1995.

Naughton is the president of Bennett.<sup>8</sup> He is the sole stockholder of the company. There are no other corporate officers and no board of directors of Bennett. Kent Mitchell is the general manager of Bennett. In this capacity, he manages the office and oversees the operation of the business. Reporting to Mitchell is Joseph Varo, the dispatcher. As the dispatcher, Varo gives the daily assignments to the crews of employees and assigns the equipment. Also reporting to Mitchell is Denise Kovacs, who oversees the warehouse operation at the facility.<sup>9</sup> In addition to Mitchell, Varo and Kovacs, Bennett employs two salesmen, three accounting office employees, two drivers and one crew member. The salesmen and accounting office employees report to Mitchell, and the drivers and crew member report to both Varo and

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<sup>7</sup> The Petitioner wishes to proceed to an election based on the petition in Case 6-RC-11829 only if it is determined that the two entities at issue herein are neither a single employer nor joint employers.

<sup>8</sup> Naughton testified at the hearing that he runs Bennett on a day-to-day basis.

<sup>9</sup> At the hearing, the parties stipulated, and I find, that Naughton, Mitchell, Varo and Kovacs are supervisors within the meaning of Section 2(11) of the Act inasmuch as they have the authority, inter alia, to direct the work of employees and to issue discipline to employees.

Mitchell, and, when they are assigned to assist in the warehouse, they are also supervised by Kovacs.

Bennett and General Teamsters Local 397 a/w International Brotherhood of Teamsters, AFL-CIO (herein called "Petitioner" or "the Union") were parties to a collective-bargaining agreement which expired on March 31, 2000. The Union was recognized by Bennett more than 30 years ago, and the parties have had successive collective-bargaining agreements which covered "all truck drivers, helpers, dockmen, warehousemen, checkers, powerlift operators, hostlers and such other employees as may be present or hereafter represented by the Union, engaged in pickup, delivery and assembling freight and furniture within the area located within the jurisdiction of the local Union."<sup>10</sup>

Piper is a Pennsylvania corporation which is also engaged in the business of providing moving and warehouse services in the Erie, Pennsylvania, area. Piper has a franchise agreement with Mayflower Transit, Inc. (herein "Mayflower"), signed by Naughton on behalf of Piper. Piper was previously called Varo Moving and was located on Edinboro Road in Erie, Pennsylvania. In 1997, Piper was bought by Naughton and Mitchell. In January 2000, Piper moved to Raspberry Street, where it shares the facility with Bennett.

Naughton is the president and Mitchell is the secretary of Piper. There are no other corporate officers and no board of directors of Piper. Naughton owns 75 percent of the company, while Mitchell own 25 percent. Mitchell is also the general manager of Piper and runs its operations on a day-to-day basis. At Piper, Varo acts as dispatcher, assigning crews of employees to jobs and allocating equipment as he does for Bennett. Kovacs is in charge of the warehouse, which is shared with Bennett. Piper also has one salesman. Its accounting work is performed by Julie DeCarolis, who is one of the three Bennett employees in the accounting

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<sup>10</sup> This is the unit description as found in the expired collective-bargaining agreement. Up to the present time, Bennett has considered only its two drivers to be part of the unit, and not the helper, John Kavelish. Inasmuch as Kavelish's position as a helper is one which I have found to be included in the appropriate unit, Kavelish will be eligible to vote in the election directed herein.

office. Piper employs one driver, Anthony Milano, and approximately four other crew members whose duties involve acting as a helper and sometimes as a warehouseman.

The single facility utilized by both Bennett and Piper is a large rectangular building with a "Bennett" sign on the front. There is an entrance in the front for customers and an entrance on the side for employees. There is an office area for accounting, a drivers' room and a dispatch office, which are all used by both Bennett and Piper employees. Most of the rest of the building is the warehouse. There is one receptionist for the facility, who is an employee of a temporary agency. Bennett and Piper have separate telephone and FAX numbers. When either entity's number rings, the receptionist answers the call with the name of the entity whose line has been called.

The warehouse, which is supervised by Kovacs, has an area for Bennett and an area for Piper; however, these areas are not kept strictly separated. United and Mayflower each provide boxes for their respective franchisees. Some types of boxes, such as mattress boxes, are unmarked and are used by employees of both Bennett and Piper. The employees of both Bennett and Piper rotate in the assignment of assisting Kovacs in the warehouse area.

When a customer places an order for moving or storage services, a salesman prepares the information on a contract, which is signed by the customer. The services are scheduled and the paperwork is placed in a folder, which is then distributed by Varo to the employees. Orders for both Bennett's and Piper's services are placed in the same folder. Each day, the employees receive their assignments from Varo. The drivers and crew members from both entities are assigned together, and may perform services for either Bennett or Piper, or for both entities, on any particular day. The size of the crew varies according to the needs of the order, usually from between two and five employees. Often, the crew will return to the facility after completing an assignment and will be sent out on a second job, which could be for either Bennett or Piper. The employees' assignments are distributed by seniority, experience and skills, without regard to the entity with which the order was placed.

In February 2000, about two months after it moved to the facility on Raspberry Street, Piper signed a lease agreement with Bennett, whereby Piper agreed to pay Bennett \$1,000 each month in rent. The lease was signed by Mitchell on behalf of Piper and by Naughton on behalf of Bennett. Although Mitchell is responsible for the daily operations at Bennett and Piper, he is on the payroll of Bennett, while Varo, the dispatcher for both Bennett and Piper, is on the payroll of Piper. Likewise, Kovacs is responsible for the warehouse for both Bennett and Piper, but she is only on the Bennett payroll.

Prior to September 1999, the drivers and crew members received two paychecks each pay period, from both Bennett and Piper, reflecting the number of hours the employee performed services for each entity. In September 1999, the employees were designated as being employed by only one of the entities, and now receive one paycheck<sup>11</sup>, either from Bennett or Piper.<sup>12</sup> The two entities have a system of record-keeping which reflects “chargebacks” from one entity to the other for the work performed by the hourly employees<sup>13</sup> as well as the supervisors and management personnel. There are also chargebacks between the companies for the use of, inter alia, other employees, supplies and equipment.<sup>14</sup> Shirley

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<sup>11</sup> John Markham has worked as a crew member at the facility for over three years. Prior to September 1999 when the employees received two checks each pay period, Markham understood that he was a Bennett employee. He began receiving only a Piper paycheck in September, and is now considered a Piper employee. Other than receiving only one paycheck each pay period, nothing else changed regarding Markham’s terms and conditions of employment at that time.

<sup>12</sup> According to Naughton, this change occurred because the employees never worked enough hours for either Bennett or Piper in a pay period to qualify to receive overtime. Because this was unfair to the employees, Naughton stated that now each employee is only issued one paycheck, reflecting payment for the total number of hours worked during a pay period, regardless of whether the work was performed for Bennett or Piper.

<sup>13</sup> It appears that the two entities bill each other at a rate of \$15 per hour when one of the employees performs work for the other entity.

<sup>14</sup> According to Naughton, Piper has sometimes been remiss in paying the money it owes to Bennett. When that occurs, Bennett considers it a loan to Piper. Bennett expects Piper to repay whatever is owed, but Bennett does not charge Piper any interest on these “loans”.

Schultz, the manager of accounting for Bennett, prepares the payroll for both Bennett and Piper employees.<sup>15</sup>

With regard to labor relations, Naughton and Mitchell formulate and effectuate all policies for both companies. There is a personnel handbook, drafted by an outside company, which applies to the employees of both Bennett and Piper.<sup>16</sup> Naughton and Mitchell attended the negotiations for the last collective-bargaining agreement covering the represented employees, with Naughton acting as the spokesperson for Bennett. All employee training is done in a combined group of employees from both entities.

Bennett and Piper have separate advertisements in the Yellow Pages, which are together in one box. The two entities have separate bank accounts, separate tax returns, separate health insurance policies for employees, separate workers' compensation policies and separate unemployment compensation accounts. Bennett and Piper own separate vehicles, but these vehicles are interchanged frequently between the two entities.<sup>17</sup> The employees share the same lunchroom. When employees are assigned to assist in the warehouse, they all perform work for both Bennett and Piper.

As described previously, the actual work performed by the drivers and crew members is identical, regardless of whether it is performed for Bennett or Piper. The crews are usually a mixture of employees from both entities, and the vehicle used might be owned by either entity. The crew might well go out to perform a move for a customer of Bennett early in the day and then return to the facility and receive an assignment for a second job for Piper in the same day, using the same vehicle and the same employees. Mitchell, Varo and Kovacs oversee all of the work performed by the employees of both entities.

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<sup>15</sup> Schultz is one of the three accounting office employees of Bennett described previously.

<sup>16</sup> Each entity has its own name on the cover, but the contents of the manuals are identical.

<sup>17</sup> The record does not reflect what names are advertised on the trucks of Bennett and Piper.

As previously discussed, the Petitioner contends that Bennett and Piper are a single employer and/or joint employers, and as such, the employees of Piper should be allowed to vote in a self-determination election to decide if they desire representation in the existing unit of Bennett employees. In the alternative, if it is found that Bennett and Piper are neither a single employer nor a joint employer, the Petitioner contends that the Piper employees constitute an appropriate unit. Bennett and Piper take the position that they are two separate entities and are not a single employer nor joint employers, and therefore the petition in Case 6-RC-11822 should be dismissed. If this position is found to be true, i.e., that Bennett and Piper are not a single employer or joint employers, then Bennett and Piper would agree that a representation election of Piper employees based on the petition in Case 6-RC-11829 is appropriate.

The Board has determined that a single employer relationship exists when two or more employing entities are in reality part of a single integrated enterprise. Centurion Auto Transport, Inc., Southeast Drivers, Inc., Eagle Auto Transport, Inc. and Automobile Transport Clearinghouse, Inc., 329 NLRB No. 42, p. 2 (September 30, 1999). The Board and the courts examine four principal factors in making this determination: (1) centralized control of labor relations; (2) common management; (3) functional interrelationship of operations; and (4) common ownership. Broadcast Employees NABET Local 1264 v. Broadcast Service of Mobile, 380 U.S. 255, 256 (1965); NLRB v. Browning-Ferris Industries, 691 F.2d 1117, 1122 (3d Cir. 1982); Centurion Auto Transport, Inc., supra; Shellmaker, Inc., 265 NLRB 748, 754 (1982).

Not all of these factors need be present to make a finding of a single employer, and no one factor, when viewed separately, has been found to be controlling. Centurion Auto Transport, Inc., supra; Hebert Industrial Insulation Corp. and Its Alter Ego Brown's Race Insulation Services, Inc., 319 NLRB 510, 524 (1995); Denart Coal Co., 315 NLRB 850, 851 (1994), enfd. 71 F.3d 486 (4<sup>th</sup> Cir. 1995). However, the Board has stressed the first three factors, particularly centralized control of labor relations, in finding single employer status. Hebert Industrial Insulation Corp., supra; Parklane Hosiery Co., 203 NLRB 597, 612 (1973). Thus, it is well settled that the fundamental inquiry is whether there exists overall control of critical matters at



the policy level. Centurion Auto Transport, Inc., supra; Emsing's Supermarket, 284 NLRB 302 (1987), citing Soule Glass Company, 652 F.2d 1055, 1075 (1<sup>st</sup> Cir. 1981). The Board has further found that single employer status depends on all of the circumstances and is characterized by the absence of an "arm's length relationship found among unintegrated companies". Centurion Auto Transport, Inc., supra, quoting Blumenfeld Theatres Circuit, 240 NLRB 206, 215 (1979), enfd. 626 F.2d 865 (9<sup>th</sup> Cir. 1980).

Applying these principles to the instant case, I find the following:

A. Centralized Control of Labor Relations - Inasmuch as Bennett and Piper have the same upper management, Naughton and Mitchell admittedly formulate and effectuate all labor relations matters for both entities. Because some of the Bennett employees have a collective-bargaining agreement, their wages and benefits are somewhat different than the rest of the Bennett employees and the Piper employees. However, Naughton and Mitchell attend the negotiations for the represented Bennett employees, and also set the labor relations policies, outlined in the personnel manual which is identical for the two entities, for all of the remaining Bennett employees and all of the Piper employees. Thus, there is clearly centralized control of labor relations herein.

B. Common Management - There is common management of the two entities in this matter. Naughton is president of both Bennett and Piper, and Mitchell is the general manager of both entities. Naughton is the only officer of Bennett, and Naughton and Mitchell are the only officers of Piper. There are no other officers or directors of either entity. Naughton signed the franchise agreement with Mayflower on behalf of Piper, as well as the franchise agreement with United on behalf of Bennett. It is clear that Naughton and Mitchell are the common management of both Bennett and Piper.

C. Functional Interrelationship of Operations - There is a high degree of functional interrelationship between Bennett and Piper. The two entities share the same facility and receptionist. The same accounting employees prepare the payrolls and the accounting records for both entities. The employees use the same breakroom, ride in the same trucks and work in

the same warehouse. The two entities even share an ad in the telephone book. More significantly, the two entities share the same supervisors, both in dispatch and in the warehouse.

There has been significant interchange between the two entities' employees. Drivers and crew members regularly perform work for the entity other than the entity from which they receive their paycheck. They often move customers of both Bennett and Piper in the same day, even using trucks from either entity. In fact, as described previously, employee Markham was unaware of which entity was his employer. Assignments are made according to seniority and experience, without regard for the name of the employer of the particular employee. All employee training is done jointly. Obviously, there is substantial interaction between the employees of both Bennett and Piper. Thus, it is clear that there is a significant functional interrelationship between Bennett and Piper.<sup>18</sup>

D. Common Ownership – Naughton is the controlling owner of both Bennett and Piper. He owns 100 percent of Bennett and 75 percent of Piper. There is no doubt that there is common ownership of the two entities.

E. Conclusion – It is apparent from the foregoing that the relationship between these two companies is not “arm’s length”.<sup>19</sup> There is common management, common ownership, functional integration and centralized control of labor relations. Although each entity maintains some separate records, this factor is not dispositive of the issue. Clearly, Naughton, Mitchell, Varo and Kovacs operate Bennett and Piper without distinction in the daily operations

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<sup>18</sup> In its brief, Bennett and Piper contend that there is not a functional interrelationship between the two entities because Bennett and Piper maintain separate corporate records, separate tax filings, separate insurance coverage, separate telephone numbers, separate bank accounts, and so forth. I do not find these factors determinative of the issue. The Board has found that keeping such separate items as described above is immaterial and not dispositive of single employer status. NLRB v. C.K. Smith & Co., Inc., 569 F.2d 162, 164 (1<sup>st</sup> Cir. 1977), enforcing 227 NLRB 1061 (1977); Alle Arcibo Corporation, 264 NLRB 1267, 1272 (1982).

<sup>19</sup> The fact that Bennett and Piper record chargebacks to each other is not sufficient to establish a lack of single employer status. In this regard, Naughton testified that Piper has been remiss in paying its debts to Bennett, and that these arrears are considered interest-free loans. This is no record evidence that Piper has repaid any of these “loans” to Bennett or that these loans have ever been reduced to writing.

or the labor relations, and all of the ultimate policymaking and direction is centralized at the upper level in Naughton and Mitchell. Those same individuals own and manage each of the entities.

Therefore, in view of the above and the record as a whole, and particularly when considering the evidence of common ownership and management, substantial integration of operations and centralized control of labor relations, and noting a lack of an arm's length relationship, I conclude that Bennett and Piper constitute a single employer within the meaning of the Act.<sup>20</sup>

Contrary to the request of the Petitioner, however, I find that a self-determination election of only the Piper employees would be inappropriate herein. In the instant case, the operation of the two entities is so integrated that a separate unit of only Bennett employees is no longer appropriate. The Board has found that, where there is operational and functional integration of a union-represented group with a nonrepresented group, then the only appropriate unit would be an overall unit of the two groups. Renaissance Center Partnership, 239 NLRB 1247, 1248 (1979). See also George V. Hamilton, Inc. and/or CMD, Inc., 289 NLRB 1335, 1340 (1988) and Abbott-Northwestern Hospital, 274 NLRB 1063, 1064 (1985).

In the instant case, I find that the prior unit of Bennett employees ceased to be appropriate when the Bennett employees and the Piper employees became merged in both function and operation. The employees of both entities report together to the same supervisors, do identical work in crews that usually contain employees of both Bennett and Piper for orders that were contracted with either Bennett or Piper. The management and policies of the two entities are also identical. Because the two entities are so merged, it would be inappropriate to have a unit consisting of only Bennett employees. For the same reason, it would also be inappropriate to have two separate units, one of only Bennett employees and one

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<sup>20</sup> In light of my finding that Bennett and Piper constitute a single employer, I find no need to address the issue of whether they are joint employers of the bargaining unit employees.

of only Piper employees. I find that the only appropriate unit in the instant case is an overall unit consisting of employees of both Bennett and Piper.

Accordingly, I find that the following employees of Bennett/Piper constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, movers and helpers employed by J.H. Bennett Moving and Storage, Inc. and Piper Moving Systems, Inc., single employer, at J.H. Bennett Moving and Storage, Inc. and Piper Moving Systems, Inc.'s Erie, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

### **ORDER**<sup>21</sup>

**IT IS HEREBY ORDERED** that the petition in Case 6-RC-11829 be, and it hereby is, dismissed.

### **DIRECTION OF ELECTION**

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>22</sup> Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who

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<sup>21</sup> Inasmuch as I have found the unit described herein to be appropriate in this matter, I shall dismiss the petition in Case 6-RC-11829.

<sup>22</sup> Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>23</sup> Those eligible shall vote whether or not they desire to be represented for collective bargaining by General Teamsters Local 397 a/w International Brotherhood of Teamsters, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 12th day of June 2000.

/s/Gerald Kobell

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Gerald Kobell  
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD  
Room 1501, 1000 Liberty Avenue  
Pittsburgh, PA 15222

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440-3350-2500-0000

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<sup>23</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before June 19, 2000. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.